

NEWPORT TRIAL GROUP  
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Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

FELIPE MORALES, DAN BOBBA and  
CHRIS RHODES, individually, and on  
behalf of all others similarly situated,

Plaintiff,

vs.

MAGNA, INC.; STEVE MOIDEL; and  
DOES 1-250, Inclusive,

Defendants.

Case No. CV10 1601 EDL

**JOINT CASE MANAGEMENT  
STATEMENT**

Complaint Filed: April 14, 2010

1. Jurisdiction and Service:

This Court has jurisdiction over all causes of action asserted herein under the Class Action Fairness Act ("CAFA") because there exists diversity of citizenship for purposes of CAFA and because the amount in controversy exceeds \$5 million. Specifically, at least one member of the putative class is a citizen of a State different from at least one of the Defendants. Moreover, this Court has federal question jurisdiction under the Federal Racketeer Influenced And Corrupt Organizations statute

1 because that claim is predicated on the racketeering activities of mail fraud and wire  
2 fraud, both of which have a strong nexus with interstate commerce, particularly in this  
3 case.

4 Venue is proper in this Court pursuant to 28 U.S.C. Section 1391 because this is a  
5 judicial district in which a substantial part of the events or omissions giving rise to the  
6 claims occurred.

7 All parties have been served and appeared in the case. Plaintiff has voluntarily  
8 dismissed all defendants except Magna-RX, Inc. and Steve Moidel. In addition,  
9 plaintiff voluntarily dismissed Felipe Morales.

10 2. Facts: This is a false advertising class action lawsuit brought against  
11 Magna-RX, Inc., and Magna-RX, Inc. President Steve Moidel. Magna-RX, Inc.  
12 manufacturers and distributes Magna-Rx+, a purported male enhancement supplement.

13 3. Legal Issues: Violation of California Legal Remedies Act; California  
14 Business and Professions Code; Fraud; and the RICO Act.

15 4. Motions: Defendants filed a Motion to Dismiss which was set for hearing  
16 on June 22, 2010. The Court granted leave to Amend. Plaintiffs filed a Motion for  
17 Preliminary Injunction which was withdrawn in light of the new plaintiffs brought into  
18 the case upon Amendment of the Complaint. Plaintiffs may not refile the Motion for  
19 Preliminary Injunction based upon apparent marketing changes made by certain  
20 defendants in response to this lawsuit. Plaintiffs will file a Motion for Class  
21 Certification. Defendants have filed a Motion to Strike the First Amended Complaint.  
22 Defendants also anticipate that they will be filing one or more motions for summary  
23 judgment.

24 5. Amendment of Pleadings: Plaintiffs have filed a First Amended  
25 Complaint.

1           6.     Evidence Preservation: Plaintiffs have taken reasonable steps to preserve  
2 evidence regarding their purchase of “Magna-Rx+” and the product packaging.

3           Defendants have requested that Plaintiffs take steps to preserve their computer  
4 hard drives so that Defendants’ forensic expert can determine what internet  
5 advertisements, if any, were accessed by Plaintiffs prior to their purchase of Magna  
6 RX+.

7           7.     Disclosures: Initial disclosures are scheduled to occur on July 20, 2010. It  
8 is anticipated the parties will disclose the names of pertinent witnesses and documentary  
9 evidence relied upon in the course of this litigation.

10          8.     Discovery: Plaintiffs will be interested in serving interrogatories and  
11 document requests, as well as conducting depositions of Steve Moidel, Gayle Moidel,  
12 and Dr. Jorge Aguilar.

13          Defendants will be interested in serving interrogatories, requests for admission,  
14 and requests for production on each Plaintiff. Defendants will also take the deposition  
15 of each Plaintiff and any expert disclosed by the Plaintiffs.

16          9.     Class Actions: Plaintiffs will file a motion for class certification. It is  
17 anticipated the motion will be filed by October 1<sup>st</sup>.

18          10.    Related Cases: Magna, Inc. and Steve Moidel are Defendants in a class  
19 action case in the State Court captioned *Vaughn v. Magna-RX*, Los Angeles County  
20 Superior Court Case No. BC 426097. Plaintiffs’ counsel are the same in both cases,  
21 and overlapping classes are alleged.

22          11.    Relief: Plaintiffs are seeking Certification of the proposed classes and  
23 notice thereto to be paid by Defendants; That the Court adjudge and decree that  
24 Defendants have engaged in the conduct alleged herein; For restitution and  
25 disgorgement on certain causes of action; For an injunction ordering Defendants to  
26 cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices  
27 alleged in the Complaint; For compensatory, general, statutory, exemplary, and any  
28

1 other damages legally available according to proof on certain causes of action; For both  
 2 pre and post-judgment interest at the maximum allowable rate on any amounts awarded;  
 3 Costs of the proceedings herein; Reasonable attorneys' fees as allowed by statute; and  
 4 Any and all such other and further relief that this Court may deem just and proper.

5 Upon prevailing, Defendants will seek to recover all attorneys' fees and costs  
 6 from Plaintiffs and/or their counsel under 28 U.S.C. § 1927.

7 12. Settlement and ADR: The parties are participating in an ADR Conference  
 8 Call with the Court on July 21, 2010.

9 13. Consent to Magistrate Judge For All Purposes: Plaintiff has filed a  
 10 Consent to Magistrate Judge.

11 14. Other References: No.

12 15. Narrowing of Issues: Authenticity of documents can be stipulated to.

13 16. Expedited Schedule: Not that we are aware of, but we are open to  
 14 ideas.

15 17. Scheduling:

16 Proposed dates for:

17 -Designation of experts:

18 Plaintiffs propose: November 15<sup>th</sup>

19 Defendants Propose: December 31, 2010

20 -Rebuttal Experts:

21 Plaintiffs propose: November 30<sup>th</sup>

22 Defendants Propose: February 28, 2011

23 -Discovery cutoff:

24 Class Discovery Cut-Off,

25 Plaintiffs propose: August 20<sup>th</sup>

26 Defendants Propose: November 30, 2010;

Fact Discovery Cut-Off,

Plaintiffs propose: January 1<sup>st</sup>

Defendants Propose: April 30, 2011;

Expert Discovery Cut-Off,

Plaintiffs propose: February 1<sup>st</sup>

Defendants Propose: May 31, 2011

-Hearing of dispositive motions:

Plaintiffs propose: February 30<sup>th</sup>

Defendants Propose Filing by: June 30, 2011

-Pretrial conference:

Plaintiffs propose: March 15<sup>th</sup>

Defendants Propose: September 15, 2011

-Trial:

Plaintiffs propose: March 22<sup>nd</sup>

Defendants Propose: October 1, 2011.

18. Trial: Plaintiff requests a jury trial. Expected Trial length is seven days.

19. Disclosure of Non-party Interested Entities or Persons: Plaintiff discloses the following interested parties: Dan Bobba, Christopher Rhodes, Scott J. Ferrell, Michael E. Velarde and Newport Trial Group. Defendants disclose none.

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1           20.   Other:

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3   Dated: July 20, 2010

NEWPORT TRIAL GROUP  
A Professional Corporation  
Scott J. Ferrell

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6                   By: /s/ Scott J. Ferrell  
                      Scott J. Ferrell

7  
8                   Attorneys for the Plaintiffs and the Classes

9  
10   Dated: July 20, 2010

AIKEN, SCHENK, HAWKINS & RICCIARDI

11                   By: /s/ Joseph A. Schenk  
                      Joseph Schenk

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13                   Attorneys for Defendants